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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/531,951	03/21/2000	Craig Douglas Voisin	57921/105	7500

7590

11/15/2002

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EXAMINER

DURAN, ARTHUR D

ART UNIT

PAPER NUMBER

3622

DATE MAILED: 11/15/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/531,951

Applicant(s)

VOISIN ET AL.

Examiner

Arthur Duran

Art Unit

3622

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1-51 have been examined.

#### ***Response to Amendment***

2. The Amendment filed on 10/25/02 is insufficient to overcome the Lumelsky and Dedrick reference.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) do not apply to the examination of this application as the application being examined was not (1) filed on or after November 29, 2000, or (2) voluntarily published under 35 U.S.C. 122(b). Therefore, this application is examined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-8, 11-20, 22-27, and 31 are rejected under 35 U.S.C. 102(e) as being unpatentable over Lumelsky, (6,246,672).

Art Unit: 3622

Claim 1: Lumelsky discloses a singlecast interactive radio system. Lumelsky further discloses maintaining an Internet-related communication session between a user and a portal (col 5, lines 44-50 and col 8, lines 19-23) and selectively providing advertisements (col 4, lines 39-42 and col 8, lines 38-40).

Claim 2: Lumelsky discloses a method as in claim 1 above, and further discloses playing an audio message identifying a product or service to be advertised, including a query as to whether the user would like to hear more information regarding the product or service, identifying a response of the user (col 7, lines 1-8 and col 5, lines 45-50), selectively playing an audio advertisement for the product or service, if the response was affirmative (col 8, lines 38-40).

Claims 3 and 24: Lumelsky discloses a method and means as in claim 2 and 23, and further discloses that the step of playing an audio message is in response to a previous user selection (col 7, lines 1-8 and col 8, lines 38-40).

Claims 4 and 25: Lumelsky discloses a method and means as in claims 2 and 23, and further discloses the step of playing and audio message comprises identifying a preference of the user and selecting an advertisement for a product of service which corresponds to the preference of the user (col 19, lines 53- col 20, line 25).

Claims 5 and 26: Lumelsky discloses a method and means as in claims 4 and 24, and further discloses identifying the user and retrieving preference information corresponding to the user, the preference information being stored in a database (col 19, lines 53- col 20, line 25).

Art Unit: 3622

Claims 6 and 27: Lumelsky discloses a method as in claims 2 and 23, and further discloses the step of identifying a response of the user comprising applying voice recognition techniques (col 12, lines 10-13).

Claim 7: Lumelsky discloses a method as in claim 2 above, and further discloses the step of selectively playing an audio advertisement which comprises defining a set of advertisements, assigning weights to each member of the set of advertisements, and selecting a member of the set of advertisements based on the assigned weight (col 8, lines 50-55 and col 13, lines 10-13).

Claim 8: Lumelsky discloses a method as in claim 7 above, and further discloses that wherein the step of assigning weights to each member of the set of advertisements comprises prioritizing each member of the set of advertisements (col 20, lines 14-22).

Claims 11 and 31: Lumelsky discloses a method as in claims 2 and 23, and further discloses that identifying a response comprises playing a confirmation audio message to confirm the response (col 7, lines 15-18).

Claim 12: Lumelsky discloses a method as in claim 1 above, and further discloses that the step of maintaining a communication session between a user and portal comprises establishing a connection between a wireless application protocol device and the portal (col 1, lines 6-9 and col 6, lines 57-65).

Claim 13: Lumelsky discloses a method as in claim 1 above, and further discloses that the step of maintaining a communication session between a user and portal comprises establishing a connection between a web device and the portal (col 8, lines 20-25 and col 8, lines 61-66).

Art Unit: 3622

Claim 14: Lumelsky discloses a method as in claim 1 above, and further discloses that the step of maintaining a communication session between a user and portal comprises communicating with a voice interface (col 8, line 66-col 9, line 1).

Claim 15: Lumelsky discloses a method as in claim 1 above, and further discloses that the step of maintaining a communication session between a user and portal comprises communicating with a personal computer interface (col 8, lines 61-62).

Claim 16: Lumelsky discloses a singlecast interactive radio system. Lumelsky further discloses a user interface coordinates communication of the service with the user (col 5, lines 50-55), an advertising subsystem to coordinate the selective presentation of advertisements to the user (col 4, lines 39-42 and col 8, lines 38-40), whereby the advertisements include sponsorship advertisements which accompany each communication session , advertisements selectively played based on particular attributes of the user, and advertisements played based on permission by the user (col 7, lines 1-8, col 8, lines 38-40, and col 19, lines 53- col 20, line 25).

Claim 17: Lumelsky discloses a service as in claim 16 above, and further discloses that the user interface comprises a receiver and a transmitter configured to communicate audio signals to and from the user (col 11, lines 50-55).

Claim 18: Lumelsky discloses a service as in claim 16 above, and further discloses at least one database, the database storing information about the user and the advertisements played (col 19, lines 53- col 20, line 25).

Claim 19: Lumelsky discloses a service as in claim 16 above, and further discloses that the advertisements selectively played based on permission by the user are selected by the user

Art Unit: 3622

voicing an affirmative response to a query (col 7, lines 1-8; col 5, lines 45-50; and col 8, lines 38-40).

Claim 20: Lumelsky discloses a service as in claim 16 above, and further discloses that the advertisements selectively played based on particular attributes of the user comprise a prioritization based on the particular attributes of the user (col 20, lines 14-22).

Claim 22: Lumelsky discloses a singlecast interactive radio system. Lumelsky further discloses a means for maintaining a communication session between a user and a portal (col 5, lines 44-50 and col 8, lines 19-23) and a means for providing advertisements during the communication session based on any one of user constraints and sales criteria (col 4, lines 39-42 and col 8, lines 38-40).

Claim 23: Lumelsky discloses a system as in claim 22 above, and further discloses a means for playing an audio message, including a query as to whether a user would like to hear more information regarding the product or service (col 7, lines 1-8 and col 5, lines 45-50), means for identifying a user's response (col 8, line 66-col 9, line 1), and means for selectively playing an audio advertisement for the product or service, if the user's response was affirmative (col 8, lines 38-40).

4. Claims 32 – 50 are rejected under 35 U.S.C. 102(b) as being unpatentable over Dedrick, (5,724,521).

Claims 32, 42, and 46: Dedrick discloses a method and apparatus for providing electronic advertisements to end users in a consumer best-fit pricing manner. Dedrick further discloses generating a possible set of advertisements (col 1, line 67- col 2, line 1 and col 4, lines 3-5), the

Art Unit: 3622

set of possible advertisements relating to context (col 2, lines 15-20), ordering the set of possible advertisements based on a sales criteria associated with each set of advertisement (col 2, lines 5-10 and lines 15-20), providing advertisements from the set of possible advertisements based on ordering (col 2- lines 5-10 and lines 15-20).

Claim 33: Dedrick discloses a system as in claim 32 above, and further discloses that the context comprises information on the user's preferences, location, and personal characteristics (col 3, lines 35-50).

Claim 34: Dedrick discloses a system as in claim 32 above, and further discloses that the sales criteria comprise information on duration of the advertising contract, information on the number of times the advertisement is to be played, and information on the number of times the advertisement had been played (col 9, lines 28-35 and 60-62).

Claims 35 and 43: Dedrick discloses a system as in claims 32 and 42, and further discloses the step of providing advertisements from set of possible advertisements comprises querying the user on whether to play an advertisement in its entirety (col 9, lines 35-40).

Claim 36: Dedrick discloses a system as in claim 32 above, and further discloses the step of providing advertisements from a set of possible advertisements comprises selecting an advertisement based on prior user selection (col, lines 5-15 and col 7, lines 66-col 8, line 1).

Claims 37 and 45: Dedrick discloses a system as in claim 32 and 42, and further discloses providing billing information on advertisements used based on a per use rate of charge (col 13, lines 18-21 and col 14, lines 25-27).

Claim 38: Dedrick discloses a system as in claim 32 above, and further discloses playing an audio advertisement via a voice interface (col 4, lines 36-38 and col 6, lines 51-54).



Art Unit: 3622

Claims 39 and 50: Dedrick discloses a system as in claim 32 and 46, and further discloses displaying advertisements on a wireless application protocol device (col 6, lines 42-47).

Claim 40: Dedrick discloses a system as in claim 32 above, and further discloses recording which particular advertisements were provided to a particular user to form a user record (col 18, lines 67- col 19, line 7).

Claim 41: Dedrick discloses a system as in claim 40 above, and further discloses identifying played advertisements for a particular user from the user record (col 18, lines 67- col 19, line 7).

Claim 44: Dedrick discloses a system as in claim 42 above, and further discloses means for assigning weights to reflect purchasing behavior characteristics of the user (col 10, lines 11-16).

Claim 47: Dedrick discloses a program code as in claim 46 above, and further discloses computer readable program code for selecting advertisements based on user constraints (col 9, line 65-col 10, line 10).

Claim 48: Dedrick discloses a program code as in claim 46 above, and further discloses computer readable program code for assigning values to advertisements based on contractual arrangements and attractiveness to the user (col 5, lines 14-29).

Claim 49: Dedrick discloses a program code as in claim 46 above, and further discloses computer readable program code for transforming semantically structure data and providing the data via a speech interface (col 4, lines 36-38 and col 6, lines 51-54).

Art Unit: 3622

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 9, 10, 21, and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lumelsky (6,246,672) in view of Dedrick (5,724,521).

Claim 9: Lumelsky discloses a method as in claim 8 above. Lumelsky does not explicitly disclose determining a ratio based on sales criteria corresponding to each advertisement of the set of advertisements. However, Dedrick discloses a method and apparatus for providing electronic advertisements to end users in a consumer best-fit pricing manner. Dedrick further discloses determining a ratio based on sales criteria corresponding to each advertisement of the set of advertisements (col 10, lines 11-16). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Dedrick's ratio based on sales criteria method to Lumelsky's interactive Internet radio system. One would have been motivated to do this so that Lumelsky has an additional quantitative method for determining programming and, thereby, maintaining customers interest.

Claims 10 and 30: Lumelsky discloses a method and system as in claim 7 above. Lumelsky does not explicitly disclose making a record of the advertisement selectively played, the record being used in defining a cost of advertising for the audio advertisement. However, Dedrick discloses recording which particular advertisements were provided, the record being

Art Unit: 3622

used in defining a cost for the advertisement (col 18, lines 67- col 19, line 7). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Dedrick's advertisement recording for cost purposes method and system to Lumelsky's interactive Internet radio system. One would have been motivated to do this so that Lumelsky has an additional quantitative method for determining cost pricing.

Claims 21 and 28: Lumelsky discloses a method and system as in claims 16 and 23. Lumelsky does not explicitly disclose a prioritization based on sales criteria associated with the advertisements. However, Dedrick discloses defining a set of advertisements (col 1, line 67- col 2, line 1 and col 4, lines 3-5), prioritizing the set of possible advertisements based on a sales criteria associated with each set of advertisement (col 2, lines 5-10 and lines 15-20), and selecting a member of the advertisements based on its criteria (col 2- lines 5-10 and lines 15-20). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Dedrick's sales criteria prioritizing to Lumelsky's interactive Internet radio system. One would have been motivated to do this so that Lumelsky has an additional quantitative method for determining content delivery.

Claim 29: Lumelsky discloses a method and system as in claim 28 above. Lumelsky does not explicitly disclose a means for determining achieved advertisement delivery rate. However, Dedrick discloses a system for determining achieved advertisement delivery rate (col 9, lines 28-40 and 60-62). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Dedrick's system for determining advertisement delivery rate to Lumelsky's interactive Internet radio system. One would have

Art Unit: 3622

been motivated to do this so that Lumelsky has an additional quantitative method for determining content delivery.

6. Claim 51 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dedrick (5,724,521) in view of Lumelsky (6,246,672).

Claim 51: Dedrick discloses a program code as in claim 46 above. Dedrick discloses that the program code operates audio content and voice recognition (col 4, lines 36-38 and col 6, lines 51-54). Dedrick does not explicitly disclose that the computer readable program code for transforming Internet-based information into speech or vocal transmission utilizes the telephone. However, Lumelsky discloses a system with program code for an interactive radio system that utilizes the telephone (col 21, lines 53-62 and col 23, line 4). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Lumelsky's voice recognition with telephone<sup>to</sup> Dedrick's voice recognition. One would have been motivated to do this because Dedrick already discloses voice recognition and utilizing the telephone for voice recognition is an obvious way to do this as Lumelsky discloses.

### ***Response to Arguments***

7. Applicant's arguments filed 10/25/02 have been fully considered but they are not found to be persuasive.

Response to arguments concerning Lumelsky reference: In regards to Lumelsky, Applicant's Response states that, 'Lumelsky makes no mention of selectively providing advertisements based on any one of user constraints and sales criteria'.

Art Unit: 3622

However, Lumelsky discloses providing an individualized information service (col 1, lines 6-12; col 5, lines 2-4). Lumelsky further discloses that this information and content includes advertising (col 4, lines 39-44; col 13, lines 10-13). Lumelsky further discloses that content can be delivered to the user based on active or passive criteria (col 11, lines 14-31). Lumelsky further discloses that content is delivered to the user based on user constraints, profiles, and criteria (col 8, lines 50-55; col 10, line 63- col 11, line 12; col 19, lines 53- col 20, line 48). Therefore, it is inherent to the Lumelsky reference that Lumelsky discloses selectively providing advertisements based on user constraints and sales criteria.

Response to arguments concerning Dedrick reference: In regards to Dedrick, Applicant's Response states that, 'Dedrick makes no mention of providing advertisements from the set of possible advertisements based on the ordering' where the ordering can be based on a sales criteria associated with each advertisement.

However, Dedrick discloses providing advertisements that are categorized, ordered, and placed on different servers and then matching these advertisements with users based on advanced criteria (col 2, lines 10-20). Dedrick further discloses charging more for advertisements that better match the criteria (col 2, lines 10-20). Dedrick further discloses providing advertisements to a user based on criteria for those advertisements (col 9, lines 49-col 10, lines 50). Dedrick further discloses that the percent match desired can be set as an argument and that limits as to the amount of match necessary in order to be listed can also be set (col 10, lines 45-64). Hence, it is inherent to Dedrick that he is ordering the selected list of advertisements because different prices are being charged based on the quantitative match quality and because there is a cutoff to the advertisements selected and only the best matching advertisements within the cutoff are allowed

Art Unit: 3622

to be listed. Therefore, it is inherent to the Dedrick reference that Dedrick discloses ordering advertising based on sales criteria.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (703)305-4687. The examiner can normally be reached on Mon- Fri, 7:30-4:00.

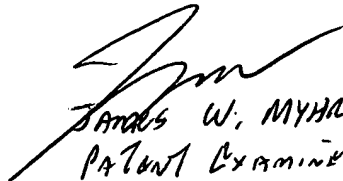
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (703)305-8469. The fax phone numbers for the organization where this application or proceeding is assigned are (703)872-9326 for regular communications and (703)872-9327 for After Final communications.

Art Unit: 3622

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.

AO

November 14, 2002

  
JAMES W. MYHRE  
PATENT EXAMINER  
ART UNIT 3622